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13 SALAM RAZUKI

14 **UNITED STATES DISTRICT COURT**

15 **NORTHERN DISTRICT OF CALIFORNIA**

16 SALAM RAZUKI, individually and on
17 behalf of others similarly situated,

18 Plaintiffs,

19 v.

20 FREEDOM MORTGAGE
21 CORPORATION, a New Jersey
22 corporation,

23 Defendants.

24 CASE NO. 3:18-cv-03344

25 **CLASS ACTION COMPLAINT**

26 **1. VIOLATION OF THE
27 CALIFORNIA UNFAIR
BUSINESS PRACTICES ACT
(CAL. BUS. & PROF. CODE §
17200, ET. SEQ.); AND**

28 **2. BREACH OF CONTRACT**

29 **DEMAND FOR JURY TRIAL**

30 Plaintiff SALAM RAZUKI, individually and on behalf of others similarly
31 situated, brings this action against Defendant FREEDOM MORTGAGE
32 CORPORATION, a New Jersey corporation, and alleges on information and belief
33 as follows:

34 **I. INTRODUCTION AND STATEMENT OF FACTS**

35 1. This consumer fraud class action is based on Defendant FREEDOM
36 MORTGAGE CORPORATION's ("Defendant") direct, *per se* violation of
37 California laws requiring a mortgage lender making loans secured by property
38 located in California to pay the borrower a minimum of 2% interest for money
39 received in advance from the borrower for tax and insurance. Defendant, like many

40 3:18-cv-03344

41 CLASS ACTION COMPLAINT

1 mortgage lenders, require a large percentage of their borrowers to maintain an
2 impound escrow account in connection with their mortgage. Defendant collects
3 money from their borrowers in advance and places it in the escrow account to pay the
4 property tax and insurance on the property. When the property tax and insurance
5 becomes due, Defendant pays it directly from the borrower's escrow account.

6 2. These additional and significant deposits made by the mortgagor to
7 maintain the escrow account are the borrowers' funds in which mortgage lenders have
8 use of for investment, and therefore, California law requires that the mortgage
9 lenders, including Defendant, pay at least 2% interest on the monies to the borrowers.

10 3. California Civil Code section 2954.8(a) mandates:

11 (a) **Every financial institution that makes loans upon the**
12 **security of real property** containing only a one- to four-family
13 residence and located in this state or purchases obligations
14 secured by such property and that receives money in advance for
payment of taxes and assessments on the property, for insurance,
or for other purposes relating to the property, **shall pay interest**
15 **on the amount so held to the borrower. The interest on such**
16 **amounts shall be at the rate of at least 2 percent simple**
interest per annum. Such interest shall be credited to the
borrower's account annually or upon termination of such
account, whichever is earlier.

17 (Emphasis added.) State escrow interest laws, such as the one set forth in California
18 Civil Code section 2954.8, do not prevent or significantly interfere with the exercise
19 of national bank powers, and Section 2954.8 is not preempted by the National Bank
20 Act ("NBA"). *Lusnak v. Bank of America, N.A.*, 883 F.3d 1185, 1188 (9th Cir. 2018).

21 4. However, Defendant systematically and uniformly adopted a policy to
22 violate California law by refusing to pay the mandated interest to borrowers, thereby
23 enriching itself on the free use of borrowers' escrow funds that Defendant earns
24 interest on.

25 5. Plaintiff Salam Razuki entered into mortgage contracts with Defendant,
26 wherein, based on the express terms of the contracts, and the reading into the contract
27 the requirement of Civil Code Section 2954.8(a), he was required to deposit funds
28 into an escrow account, and Defendant would be required to pay interest on the

1 escrow if applicable laws so required. The boilerplate, adhesive, and non-negotiable
2 terms of the mortgage agreements drafted by Defendant require the escrow account
3 to comply with applicable law.

4 6. Throughout the term of the mortgage contract, Plaintiff has been
5 required to make approximately \$1,045.52 in monthly payments to Defendant, in
6 addition to the regular monthly mortgage payment, for the pre-payment of property
7 tax and insurance on the property. Based on information and belief, Defendant has
8 use of those funds at all times, between the time when such funds were received from
9 Plaintiff to the time when Defendant made tax and insurance payments on Plaintiff's
10 property. However, Plaintiff has never received interest from Defendant on the
11 monies he prepaid, and which monies were held by Defendant for the payment of the
12 property taxes and insurance.

13 7. Plaintiff has continuously deposited funds into his escrow account,
14 which are due every month for approximately \$1,045.52. However, Plaintiff has
15 never received from Defendant interest on the monies he prepaid, and which monies
16 were held by Defendant for the payment of the property taxes and insurance. While
17 the agreements drafted by Defendant in the mortgage required the creation of an
18 escrow account and that Plaintiff deposit funds into the escrow account, there was no
19 contractual agreement that Defendant would be permitted to withhold the interest
20 accrued on these accounts, and instead required that the interest would be handled
21 pursuant to applicable state and federal laws. California Civil Code section 2954.8(a)
22 is an applicable state law. Therefore, Defendant is obligated to comply with this state
23 law, as discussed above, in performing its obligations under the agreements and
24 therefore, pursuant to its own contract as well as specific California law, must pay
25 interest on Plaintiff's impound escrow account.

26 8. Therefore, Plaintiff, for himself and all others similarly situated (*i.e.*, the
27 members of the Plaintiff Class described and defined within this Complaint), brings
28 this action for restitution and reimbursement, equitable injunctive relief and

1 declaratory relief, pursuant to the California Unfair Competition Laws (“UCL”),
2 California Business and Professions Code section 17200, *et seq.*; and breach of
3 contract.

4 **II. PARTIES**

5 9. Plaintiff Salam Razuki is, and all relevant times was, an individual
6 residing in the County of San Diego, California. He is an aggrieved customer of
7 **FREEDOM MORTGAGE COMPANY**, a New Jersey limited liability company.

8 10. **FREEDOM MORTGAGE COMPANY** is, and all relevant times was, a
9 corporation with its headquarters and principal place of business located in Mount
10 Laurel, New Jersey. Defendant enters into mortgage agreements with customers for
11 finance of their homes and, upon information and belief, requires a large percentage
12 of its customers throughout California and many other states to maintain escrow
13 accounts, into which customers deposit significant funds for the payment of property
14 tax and insurance on the property. However, Defendant has systematically and
15 uniformly failed and continues to refuse to pay interest on those funds, in direct, *per*
16 *se* violation of state and federal laws.

17 **III. JURISDICTION AND VENUE**

18 11. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332(a).
19 The matter in controversy, exclusive of interest and costs, exceeds the sum or value
20 of \$75,000, and is between citizens of different States.

21 12. Venue is proper in the Northern District of California pursuant to 28
22 U.S.C. § 1331(b) through (d), because Defendant is authorized to conduct business
23 in this District and has intentionally availed itself of the laws and markets within this
24 District; does substantial business in this District; and is subject to personal
25 jurisdiction in this District.

26 **IV. CLASS ACTION ALLEGATIONS**

27 13. Plaintiff re-alleges and incorporates by reference all preceding
28 paragraphs.

1 14. Plaintiff brings this action on behalf of himself and all other similarly
2 situated persons as a class action pursuant to Federal Rules of Civil Procedure 23(a),
3 (b)(1), (b)(2), and (b)(3).

4 15. **CLASS PERIOD.** The Class Period shall be defined as four years prior to
5 the filing of this Complaint through the date to be determined by the Court.

6 16. **CLASS DEFINITION.** The Class is defined as:

7 *All mortgage loan customers of Defendant (or its subsidiaries),
8 whose mortgage loan is for a one-to-four family residence
9 located in California, and who paid Defendant money in advance
10 for payment of taxes and assessments on the property, for
insurance, or for other purposes relating to the property, and did
not receive interest on the amount held by Defendant.*

11 17. Members of the class will be collectively referred to as the “Class.” The
12 Class does not include (1) Defendants, their officers, and/or their directors; or (2) the
13 Judge to whom this case is assigned and the Judge’s staff.

14 18. Plaintiff reserves the right to amend the above class and to add additional
15 classes and subclasses as appropriate based on investigation, discovery, and the
16 specific theories of liability, under Rule 23. This action has been brought and may be
17 properly maintained as a class action under the provisions of Rule 23 because the
18 Class is so numerous that joinder of all members is impracticable; there are questions
19 of law or fact common to the Class; the claims or defenses of Plaintiff is typical of
20 the claims or defenses of the Class; and Plaintiff will fairly and adequately protect
21 the interests of the Class:

22 19. **NUMEROSITY:** The potential members of the Class as defined are so
23 numerous that joinder of all the members is impracticable. While the precise number
24 of Class members has not been determined, Plaintiff is informed and believes that
25 Defendant has access to data sufficient to identify all class members and all relevant
26 payments.

27 20. Plaintiff is informed and believes that Class members may be identified
28 through business records regularly maintained by Defendant and its employees and

1 agents, and through the media, the number, identities, and local of all Class members
2 can be ascertained. Members of the Class can be notified of the pending action by e-
3 mail, mail, and supplemented by published notice, if necessary.

4 **21. ADEQUACY OF REPRESENTATION:** The representative Plaintiff is fully
5 prepared to take all necessary steps to fairly and adequately represent and protect the
6 interests of the class defined above. Plaintiff's attorneys are ready, willing, and able
7 to fully and adequately represent the class and individual Plaintiff. Plaintiff's
8 attorneys are highly experienced in consumer class action litigation. Plaintiff intends
9 to prosecute this action vigorously.

10 **22. COMMON QUESTIONS OF LAW AND FACT:** There are predominant
11 common questions of law and fact and a community of interest amongst Plaintiff's
12 and the claims of the Class concerning:

- 13 a. Whether Defendant violated California Civil Code section
14 2954.8(a) by failing to pay interest on borrowers' money it held
15 for pre-payment of property taxes, insurance, and other purposes;
- 16 b. Whether Defendant has systematically engaged in a conduct that
17 is a *per se* violation of state and federal laws with respect to the
18 disbursement of the interest accrued on escrow accounts back to
19 the customers;
- 20 c. Whether Defendant's conduct breached the mortgage agreements
21 with its customers;
- 22 d. Whether Defendant must provide damages, restitution, and/or
23 reimbursement to borrowers in the amount of unpaid interest on
24 funds held in impound escrow accounts based on the causes of
25 action asserted here; and
- 26 e. Whether injunctive relief is appropriate to prohibit Defendant
27 from engaging in this type of conduct in the future.

1 23. **TYPICALITY:** The claims of the Plaintiff are typical of the claims of all
2 members of the Class. Plaintiff, like all other members of the Class, has sustained
3 damages arising from Defendant's violations of the laws as alleged herein. The
4 representative Plaintiffs and the members of the Class were and are similarly or
5 identically harmed by the same unlawful, deceptive, unfair, systematic, and pervasive
6 pattern of misconduct engaged in by Defendant.

7 24. **SUPERIORITY OF A CLASS ACTION:** A class action is superior to other
8 available means for the fair and efficient adjudication of this controversy. Individual
9 joinder of all class members is not practicable, and questions of law and fact common
10 to the Classes predominate over questions affecting only individual Class members.
11 Each Class member has been damaged and is entitled to recovery due to Defendant's
12 conduct described in this Complaint. A class action will allow those similarly situated
13 to litigate their claims in the most efficient and economical manner for the parties and
14 the judiciary. Plaintiff is unaware of any difficulties likely to be encountered in this
15 action that would preclude its maintenance as a class action.

16 **V. CAUSES OF ACTION**

17 **FIRST CAUSE OF ACTION**
18 **VIOLATION OF CALIFORNIA UNFAIR BUSINESS PRACTICES ACT**
19 **(CAL. BUS. & PROF. CODE § 17200, ET SEQ.)**

20 25. Plaintiff re-alleges and incorporates by reference all preceding
21 paragraphs.

22 26. The Unfair Business Practices Act defines unfair business competition
23 to include any "unfair," "unlawful," or "fraudulent" business act or practice. The Act
24 also provides for injunctive relief, restitution, and disgorgement of profits for
violations.

25 27. Defendant's unlawful, unfair, and fraudulent business acts and practices
26 are described throughout this Complaint and include, but are not limited to the
27 following. Defendant has and continues to engage in a practice of failing to pay
28 interest to its borrowers on impound escrow account, as required by the laws of

1 California, thereby illegally profiting from the use of interest free funds in thousands
2 of mortgage accounts. This is a *per se* violation California Civil Code section 2954.8
3 and United States Code, title 15, section 1639d(g).

4 28. Plaintiff and the Class have suffered injury in fact as a direct result of
5 Defendants' failures, as described in the preceding paragraphs and as will be detailed
6 through discovery. As such, Plaintiff and the Class request damages in an amount to
7 be proven at trial and also seek injunctive relief as prayed for below.

8 29. Pursuant to Business & Professions Code section 17203, Plaintiff seeks
9 an order requiring Defendants to immediately cease such acts of unlawful, unfair and
10 fraudulent business practices. If Defendant is not enjoined from engaging in the
11 unlawful business practices described above, Plaintiff, the Class, and the general
12 public will be irreparably injured. The exact extent, nature, and amount of such injury
13 is difficult to ascertain at this time.

14 30. Plaintiff and the Class have no plain, speedy, and adequate remedy at
15 law.

16 31. Plaintiff and the Class reserve the right to allege other violations of law
17 which constitute other unlawful business acts or practices. Such conduct is ongoing
18 and continues to this date. Defendant, if not enjoined by this Court, will continue to
19 engage in the unlawful business practices described above in violation of the UCL,
20 in derogation of the rights of Plaintiff, the Class, and of the general public.

21 32. Finally, the success of Plaintiff in this action will result in the
22 enforcement of important rights affecting the public interest by conferring a
23 significant benefit upon the general public. Private enforcement of these rights is
24 necessary as no public agency has pursued enforcement. There is a financial burden
25 incurred in pursuing this action, and it would be against the interests of justice to
26 require the payment of attorneys' fees from any recovery in this action. Plaintiffs are
27 therefore entitled to an award of attorney's fees and costs of suit pursuant to
28 California Code of Civil Procedure Section 1021.5.

SECOND CAUSE OF ACTION
BREACH OF CONTRACT

33. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

34. Defendant was bound by the mortgage agreements with Plaintiff and the Class, and was a signatory thereto.

35. Plaintiff, and all others similarly situated, did all, or substantially all, of the significant things that the agreements required them to do.

9 36. Meanwhile, Defendant failed to perform the express terms of the
10 agreements which stated Defendant would comply with applicable state and federal
11 law, which included the state and federal law that mandated Defendant pay interest
12 to borrowers for funds collected on an impound escrow account. As such, and as set
13 forth above, Defendant breached an express term of the agreements.

14 37. As a result, Plaintiff and the Class members have been harmed by
15 Defendant's breach of contract.

VI. PRAYER FOR RELIEF

17 WHEREFORE, Plaintiff, on behalf of himself and the members of the Class,
18 demands judgment against, and general and specific relief from, Defendant as
19 follows:

20 1. An order certifying the Class as described herein, and appointing
21 Plaintiff and his counsel of record to represent the defined Class;

22 2. An order enjoining Defendant under California Business and
23 Professions Code section 17203:

24 a. To cease such acts and practices declared by this Court to be an
25 unlawful, fraudulent, or an unfair business act or practice, a
26 violation of laws, statutes, or regulations, or constituting unfair
27 competition; and

VII. JURY DEMAND

15 Plaintiff requests a jury on all triable issues.

17 || Respectfully submitted:

18 | Dated: June 6, 2018

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